

ESSEX COUNTY BAR ASSOCIATION
COMMUNITY DISPUTE RESOLUTION PROJECT

PROPOSAL AND PROCEDURAL RULES

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I. INTRODUCTION

The Essex County Bar Association recognizes that many citizens come into court displaying problems and conflicts that do not require formalized legal structures to resolve. Many of these conflicts arise out of interpersonal relationships between family members or immediate neighbors. Generally, the root causes for these conflicts lie in misunderstandings between the individuals involved and only require third-party mediation or conciliation in order to resolve the problem.

The Essex County Bar Association Committee on Community Dispute Resolution has developed this proposal as an alternative means of resolving such minor disputes. The proposed program will actively involve the membership of the County Bar Association in the formation of dispute resolution hearing teams to resolve interpersonal family and neighborhood disputes throughout the several municipal courts in Essex County.

II. OVERVIEW

Neighborhood and Family Dispute Programs have been developed as an alternative approach to formal court action for the resolution of minor disputes. As far back as 1951, the New Jersey Supreme Court recognized the need to permit a stage in

the process - before a formal complaint issued - providing disputants with an opportunity to resolve their differences without invoking the full panoply of the law. Such authorization has been provided for within the court rules.

Succinctly, R. 7:3-2 provides:

If the offense charged may constitute a minor neighborhood or domestic dispute, a notice may issue to the person or persons charged, requesting their appearance before the court, or such person designated by the court and approved by the Assignment Judge, in order to determine whether or not a complaint should issue or other appropriate action be taken.

The present construction of R. 7:3-2 clarifies prior language which suggested that informal types of dispositions were not available if the dispute constituted a disorderly persons violation, e.g., simple assault and battery without injury. More recent amendments, however, have broadened the scope of the rule thereby permitting some disorderly persons offenses to be encompassed, where appropriate; and an intake provision has been added requiring concomitant follow-up which should more fully resolve the problem than would a single court appearance. It is recognized that a complaining witness may always file a formal complaint if dissatisfied with the pre-judicial handling by a dispute program.

Many municipal court judges presently avail themselves of the dispute resolution alternative. The New Jersey Administrative Office of the Courts reports that 6238 notices in lieu of complaints were issued during the 1978-1979 court year. Moreover,

several municipal courts (Jersey City, Trenton, Plainfield, East Orange, Orange, Newark, and Camden) have at one time developed full time dispute programs. More recently the probation departments of Bergen, Hudson and Middlesex Counties have inaugurated county-wide programs.

On the national level the United States Justice Department, through the Law Enforcement Assistance Administration (LEAA), has funded three demonstration projects in Atlanta, Kansas and Venice - Mar Vista, California. LEAA has completed its interim evaluation of the demonstration projects, and although LEAA is not in a position to quantitatively establish the success or failure of resolving disputes through an informal process, every indication is that dispute settlements appear to be successful, with the informal proceeding being well-received by both criminal justice practitioners and the general public.

Governor Brendan Byrne in his Fifth Annual Message to the New Jersey Legislature, delivered on January 9, 1979, has committed his administration to joining with the judicial branch and the New Jersey State Bar Association in advancement of dispute resolution alternatives throughout New Jersey. In this regard the Governor noted:

During the coming year, in cooperation with the Supreme Court and the New Jersey State Bar Association, I shall undertake to extend this exciting program in conflict resolution to other communities throughout the State. The Departments of Law and Public Safety and the Public Advocate have agreed to provide technical assistance in training people in dispute settlement. The result should be a system of resolving disputes that is not only fairer, but more acceptable and economical than the present system.

The Essex County Bar Association Community Dispute Resolution Project will serve as a model for other bar associations throughout the State. The program will be staffed by attorneys who have a desire to volunteer their time and expertise in the furtherance of informal community dispute resolution. The program will work closely with the municipal courts under authority of R. 7:3-2. The program staff will focus on complaints involving minor quasi-criminal conduct, particularly where there is evidence of a continuing relationship between the parties.

III. GOALS AND OBJECTIVES

- A. Reduce the number of Complaints heard by municipal court judges which cause a backlog in the courts.

Target - Municipal Courts have over the last several years experienced an increased filing of complaints involving minor disputes. The Essex County Bar Association Community Dispute Resolution Project will provide a mediation/conciliation mechanism for the resolution of minor complaints. These may include:

- 1) Family Disputes
- 2) Simple Assaults (non-injury)
- 3) Trespasses
- 4) Obstruct, molest, hinder or otherwise interfere
- 5) Creating disturbance
- 6) Noise Complaints
- 7) Dog and other animal complaints
- 8) Annoying phone calls
- 9) Shoplifters
- 10) Larceny under \$200
- 11) Neighborhood disputes
- 12) Merchant/customer disputes
- 13) Landlord/tenant disputes
- 14) Malicious destruction of property
- 15) Property disputes

- B. Rapidly and fairly dispense justice to citizens of New Jersey who become involved in non-serious criminal behavior.

Target - Volunteer attorneys will be available to hold mediation/conciliation sessions within the communities wherein the complaining witness resides, at a time and place which is convenient to citizens. Such sessions will be arranged on an as needed or regular basis depending upon the demand for such activity within each participating municipal court.

- C. To ease community and interpersonal tensions by helping the parties involved find acceptable solutions to their problems without resorting to a formal complaint.

Target - Lawyers are generally looked to and relied upon by the general public as individuals who have the ability, training and expertise to assist in almost every conceivable dispute situation. The voluntary participation of lawyers in the Community Dispute Resolution Project will provide disputants with a sense of comfort and assurance that the dispute/problem will be appropriately resolved.

- D. Act as a referral agency when other services are needed.

Target - Mediation/conciliation sessions often lead to the identification of social and other problems which need long term intervention, counselling, etc. Such indications generally will surface during discussion and inter-play between disputants. The Community Dispute Resolution Project will have available a resource of appropriate referral agencies and can coordinate such referrals through the office of the Executive Director - Essex County Bar Association.

- E. Remove the stigma of an arrest record arising from minor personal disputes brought into court.

The Community Dispute Resolution Project will provide another dimension for participating municipal courts. Police and court clerks who have "front-line" initial contact with disputants will be able to advise potential litigants on the nature and procedure of the program and encourage referral, thus alleviating the overburdened and perhaps unnecessary arrest process. The volunteer lawyers can reinforce the informal resolution process when the parties appear before them. Thus, processing and resolution of minor disputes and problems normally filed with participating municipal courts will be taken over by the Community Dispute Resolution Project, thereby freeing overburdened resources, i.e., police, courts, judges, etc., enabling them to concentrate on the more serious matters brought before them.

IV. ACTIVITIES

A. The Community Dispute Resolution Project will be coordinated by the Essex County Bar Association Committee on Community Dispute Resolution.

B. The membership of the Essex County Bar Association will be combed, recruiting lawyers interested in participating as mediators in the Community Dispute Resolution Project.

C. The office of the Executive Director - Essex County Bar Association will coordinate scheduling of mediators with the participating municipal courts.

D. The office of the Executive Director along with the Project Director will be responsible for initiating periodic reports on dispute team activity in the county and for reporting such information as number of referrals, hearing held, resolutions reached, etc., to the Project Director, the Assignment Judge of Essex County and the Administrative Director of the Courts.

E. The office of the Executive Director - Essex County Bar Association will assist in the referral of disputants to community legal and/or social agencies when such a determination is deemed appropriate by a mediator.

F. Each volunteer lawyer who wishes to participate in this program as a dispute mediator will be required to attend and be certified in mediation/conciliation techniques by a program approved by the Community Dispute Resolution Committee.

V. CRITERIA-OFFENSES HANDLED

A. The following offenses shall be automatically referred by the clerk of participating municipal courts to the Community Dispute Resolution Project:

- 1) Family Disputes
- 2) Simple Assaults (non-injury)
- 3) Trespasses
- 4) Obstruct, molest, hinder or otherwise interfere
- 5) Creating a disturbance
- 6) Noise Complaint
- 7) Dog and other animal complaints
- 8) Annoying phone calls
- 9) Neighborhood disputes
- 10) Merchant/Customer Disputes
- 11) Property Disputes

B. The following classes of offenses shall be referred to the Community Dispute Resolution Project at the discretion of the municipal court judge:

- 1) Shoplifting
- 2) Larceny under \$200.00
- 3) Malicious destruction of property
- 4) Landlord/Tenant Disputes

In view of the recent changes effected by the Code of Criminal Justice (N.J.S.A. 2C:20-11), it is anticipated that court referrals to the Project of offenses in category (1), supra, will ordinarily be limited to first offenders.

VI. PROCEDURAL RULES

1) Scheduling of Hearings. The Executive Director of the ECBA shall prepare a schedule of hearings in consultation with the clerks of the participating municipal courts. For each scheduled hearing date, at least one mediator shall be assigned.

The Executive Director of the ECBA shall advise the clerks of the participating municipal courts as to available upcoming hearing dates for which disputed matters may be scheduled.

2) Referral to Project by Clerk. Complaints which fall within the ambit of the program criteria will be screened by the clerks of the participating municipal courts, and an intake form (Form 1) will be filled out by the complaining party. At that time, a hearing date will be assigned by the clerk of the municipi-

pal court. The hearing date should be no more than two weeks after the intake date.

The complainant will be given a copy of the program's guidelines and rules, and the intake form will be forwarded to the Executive Director of the ECBA for referral to a mediator.

The clerk of the participating municipal court will then forward a letter (Form 2), together with a copy of the program guidelines and rules to each respondent in the matter directing their appearance before the mediator on the scheduled hearing date. The letter shall refer to R. 7:3-2 and will be sent under the municipal judge's signature.

3. Referral by Court. If a matter listed under the four categories of section V(B) is referred to the project by a participating municipal court judge, then the procedure set forth in Rule 2, supra, shall be employed.

However, in all referrals under this section, a written letter of referral shall be sent by the participating municipal court judge, over his signature, to the office of the Executive Director - Essex County Bar Association.

4. Mediators. Each disputed matter shall be heard by the mediator on the assigned date, unless adjourned or referred back to the court as provided infra.

Once assigned to a case, each mediator is required to disclose any personal or financial relationship with either party to the dispute. Then, either at his/her own request or at the request of one or both of the parties, the mediator

may be excused from the case. No conversations occurring during the course of a hearing, nor the records of the Project, mediators or staff, can be involved in any court proceeding whatsoever.

Subject to applicable legal provisions and these rules, any and all matters relating to the conduct of the mediation hearings will be determined by the mediator in his/her sole discretion.

5. Counsel. In order to maintain an informal atmosphere in the mediation process, counsel will be permitted to attend hearings, however, they will not be permitted to participate. This is necessary in order to maintain the atmosphere most conducive to a mediated solution.

6. Witnesses. The parties may bring as many witnesses as they wish to the hearing.

7. Evidence. Parties should be prepared prior to a hearing with all documentary evidence necessary to their respective claims, including, where appropriate, receipted bills or firm estimates from a reputable concern. The parties may offer whatever evidence they desire and shall produce whatever additional evidence the mediator requests as necessary to understand and aid in resolving the dispute.

The legal rules of evidence do not apply to mediation hearings, and the mediator shall be the sole judge of the relevancy and materiality of the evidence offered.

8. Adjourned Hearings. The mediator may adjourn hearings for good cause. If a party fails to be present at

an adjourned hearing, the matter will be referred back to the court.

9. Closing of a Hearing. When the parties reach a mediated settlement, the hearing shall be designated as officially closed. If the parties cannot reach their own agreement, or if either or both of the parties fail to appear the mediator shall refer the matter back to the court for processing as a formal complaint.

Any disputes involving firearms or other deadly/dangerous weapons shall be referred back to the court.

The hearing officer(s) shall report the outcome of each mediation, whether successful or not, to the office of the Executive Director - Essex County Bar Association, on forms approved by the Project Director.

10. Communication with the Mediator. There shall be no communication between the parties and the mediator other than at the mediation session. Any other oral or written communication from the parties to the mediator shall be accomplished through the office of the Executive Director, Essex County Bar Association.

REQUEST FOR MEDIATION

I hereby request a hearing by hearing officers of the Essex County Bar Association Community Dispute Resolution Project.

I fully understand and agree that the Committee is an alternative to formal court proceedings and I am aware that I have the option of presenting this matter to a court of law.

PLEASE PRINT INFORMATION

MUNICIPALITY: _____

DATE: _____

TIME: _____

Your Name: _____ (Male _____ Female _____)

Your Address: _____ Your Age: _____

Telephone where you may be reached Home: _____

Work: _____

Other Party: _____ (Male _____ Female _____)

His or Her Address: _____

His or Her Telephone Number: _____ Defendant's Age: _____

Date & Time of Incident: _____

Do you feel that your dispute fits one of the following: (Check)

_____ Family Dispute _____ Simple Assault & Battery

_____ Trespasses _____ Noise Complaint

_____ Harassment _____ Merchant/Customer Dispute

_____ Property Dispute _____ Creating a Disturbance

_____ Neighborhood Dispute _____ Dog or other animal complaint

_____ Obstruct, molest, etc. _____ Other

If so, please explain what happened: _____

In what Town did this occur? _____

Was anyone injured? Yes/No If yes, who? _____

What were the injuries? _____

Did anyone go to the doctor or hospital? Yes/No

If you were the injured party, do you have any doctor or medical bills relating to this matter? Yes/No

Was anything damaged? _____

If so, what was damaged and what was the cost to repair or replace same? _____

Do you have any bills for the repair or replacement of the damages done? Yes/No

Have you ever signed a complaint against the Defendant before? Yes/No

If yes, give date and municipality: _____

Explain the nature of the complaint and what happened: _____

Signature of Complainant

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DISPUTE RESOLUTION

Date of hearings(s) _____

Complainant appeared Yes ☐ No ☐

Respondent appeared Yes ☐ No ☐

Description of dispute:

Any referral to social service agency? ☐

If so, what: _____

Did dispute involve problems with:

Drugs ☐

Alcohol ☐

Mental Illness ☐

If so, which party: _____

Disposition

☐ Dispute Mediated

☐ Refer to Court

Mediator
Phone No. _____

Return ASAP to ECBA, 24 Commerce St. Newark

MUNICIPAL COURT OF THE

_____ of _____, COUNTY of ESSEX,
STATE OF NEW JERSEY

Notice in Lieu of Complaint, Rule 7:3-2

To _____
Of _____
_____, N.J.

Please take notice that you have been informally charged by
_____ of _____
_____, N.J., with the commission
of a Neighborhood dispute, to wit:
Domestic

You are therefore hereby notified to appear before a hearing
officer of the Community Dispute Resolution Project at _____
_____, in said municipality at _____ m.
on the _____ day of _____, 19____, so that it
may be determined whether or not a complaint should issue.
A copy of the Project's guidelines is enclosed.

Dated:

Judge